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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of the Pay Telephone)
Reclassification and Compensation) CC Docket No. 96-128
Provisions of the)
Telecommunications Act of 1996)

AT&T Comments

Pursuant to the Commission's Public Notice (DA 00-2189, released September 26, 2000), AT&T Corp. submits the following comments on the RBOC/GTE Payphone Coalition's ("Coalition's") August 8, 2000 proposal¹ to resolve outstanding issues related to payphone compensation for the period from November 7, 1996 to October 6, 1997 (the "Interim Period").

AT&T agrees that the remaining issues relating to the Interim Period should be resolved promptly. As the Coalition (at 2) notes, these issues not only affect payphone service providers' ("PSPs'") compensation for that period but also carriers' ability to obtain reimbursement for overpayments made to PSPs during various stages of the payphone compensation regime.

AT&T also agrees with some elements of the Coalition's proposal, but believes that the Coalition's alternative proposal based on carriers' share of 800 toll free revenues in 1997² will be easier to administer and will generate fewer disputes. Both proposals would be based upon the per-call rate of \$.238, which is the per-call rate applicable to all

¹ Letter from Michael K. Kellogg to William Kennard dated August 8, 2000, CC Docket No. 96-128 ("Coalition Proposal").

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calls between October 7, 1997 and the effective date of the *Third Report and Order*.³

However, the ability to apply the Coalition's proposal assumes that the per-call compensation payments in 1998 were based upon actual payphone usage. Unfortunately, that is not the case for a significant number of payphones.

As the Commission is aware, there was much concern in 1997-98 about LECs' ability to pass, and IXC's ability to process, the Flex ANI codes needed to track and process payphone traffic for compensation purposes. Accordingly, the Commission issued a number of waivers to LECs that allowed them to extend the time to make such codes available to IXCs. In addition, the Commission granted waivers to IXCs that allowed them to use surrogates to estimate the amount of payphone traffic for which compensation was due.⁴ Thus, carriers' ability to track payphone calls using Flex ANI remained an issue for a major portion of 1998, and generated ongoing differences between carriers and PSPs (particularly those operating "smart" payphones⁵) regarding compensation payments. As a result, application of the Coalition's initial proposal is more likely to lead to disputes than its alternative proposal, which can be universally applied irrespective of such issues, to derive a fixed amount due from each carrier for all payphones.

² *Id.* at 4 (n.9).

³ *Third Report and Order*, FCC 99-7, released February 4, 1999, ¶¶ 196-197 & n.427, *aff'd sub nom. Am. Pub. Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000). See Coalition Proposal n.8.

⁴ *E.g.*, Memorandum Opinion and Order, DA 98-0481, adopted March 9, 1998 (Com. Car. Bur.); Memorandum Opinion and Order, DA 96-0642, released April 3, 1998 (Com. Car. Bur.); Order, DA 98-0701, released April 10, 1998 (Com. Car. Bur.).

⁵ Because Coalition members' payphones were primarily "dumb" sets at that time, these issues presumably had a lesser effect on them.

Under the Coalition's alternative proposal, each carrier would owe a fixed amount of compensation per phone per month, calculated as follows:

First, the Commission would rely upon the 131 call per month per phone figure that was developed in the *First Report and Order*.⁶

Second, the 131 call per month figure would be multiplied by the approved compensation rate of \$.238 to derive the total compensation per payphone for dialaround calls, generating a compensation amount of \$31.18 per phone per month.

Third, every carrier's per-phone obligations would be determined by multiplying \$31.18 by its share of the 800 toll free services market in 1997. No carriers would be omitted.

This methodology is fully supported by the prior case law regarding payphone compensation and can be applied without generating any further disputes between PSPs and IXC's. The 131 call per month figure was supported by data in the record of the First Report and Order⁷ and was never appealed or criticized by the Court of Appeals.⁸ Accordingly, it stands unchallenged. Moreover, as the Coalition (at 1) notes, the Court of Appeals has now upheld the compensation rate established in the *Third Report and Order*. And critically, unlike the original allocation factor the Commission developed (IXC annual toll revenues for carriers with more than \$100 million in revenues⁹), which

⁶ *Report and Order*, FCC 96-388, released September 20, 1996, ¶ 125 ("First Report and Order")

⁷ *Id.* at ¶ 124.

⁸ *Ill. Pub. Telecomm. Ass'n v. FCC*, 117 F.3d 555 at 564-65, *cert denied sub nom. Va. State Corp. Comm'n v. FCC*, 523 U.S. 1046 (1998) ("*Ill. Pub. Telecomm.*"), *affirming in part and reversing in part the First Report and Order and the Order on Reconsideration*, FCC 96-439, released November 8, 1996 ("*Reconsideration Order*").

⁹ *Reconsideration Order* ¶ 126.

was rejected by the Court of Appeals,¹⁰ AT&T agrees with the Coalition that use of carriers' 1997 market shares for 800 toll free calls would be a reasonable surrogate. As the Coalition (n.9) notes, a large majority of all compensable calls from payphones are exactly those types of calls. Moreover, there should be no exemption of any carrier in developing each carrier's obligations.¹¹ Finally, applying a per-phone-based compensation rate more closely adheres to the Commission's determination that compensation for 800 toll free and dialaround calls during the Interim Period would be covered by a per-phone, not a per-call methodology.¹²

In addition, the Commission determined that carriers should be able to track and pay BOCs separately for 0+ calls dialed from payphones, in the absence of other compensation agreements.¹³ Accordingly, payments for such calls should be made on a per-call basis and paid for at the established \$.238 rate.

AT&T believes that this methodology can be implemented with a minimum of effort and that it will avoid any potential debate about carriers' and PSPs' obligations, enabling the issue of compensation for the Interim Period finally to be put to rest.

¹⁰ 117 F.3d at 565.

¹¹ *See Id.*

¹² Thus, it is at least arguably a greater modification of the Commission's earlier rules to apply the Coalition's initial proposal, which is inherently based upon application of a per-call methodology to the per-phone compensation period.

¹³ *See* Memorandum Opinion and Order, DA 96-0642, released April 3, 1998 (Com. Car. Bur.) n.52; *Third Report and Order*, ¶ 53.

Conclusion

The Commission should resolve the interim compensation issue by adopting the methodology described above.

Respectfully submitted,

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